

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

WILLIAM JAMES WALLACE, II,
Plaintiff,
v.
J. WHITE, et al.,
Defendants.

Case No. 1:20-cv-00844-NONE-EPG (PC)

**ORDER DENYING REQUEST TO APPOINT
EXPERT WITNESS**

Plaintiff William James Wallace, II (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

On June 7, 2021, the Court entered an order directing the parties to file a statement regarding the schedule and discovery matters within thirty days. (ECF No. 29.) Plaintiff filed his statement on June 25, 2021. (ECF No. 32.) In his statement, Plaintiff requests that the Court appoint an expert witness “to attest to the unsanitary conditions at Wasco State Prison, in regard to the claims of inadequate ventilation, inoperable plumbing and another to qualify the Plaintiff as entitled to the Reasonable Accommodations to which he requested and was subsequently denied.” (ECF No. 32.)

The Court has the discretion to appoint an expert pursuant to Rule 706(a) of the Federal Rules of Evidence. *See Walker v. American Home Shield Long Term Disability Plan*, 180 F.3d 1065, 1071 (9th Cir. 1999). In relevant part, Rule 706(a) states that, “[o]n a party’s motion or on

1 its own, the court may order the parties to show cause why expert witnesses should not be
2 appointed . . .” Fed. R. Evid. 706(a). While the Court has the discretion to appoint an expert and
3 to apportion costs, including the apportionment of costs to one side, Fed. R. Evid. 706(c)(2); *Ford*
4 *ex rel. Ford v. Long Beach Unified School Dist.*, 291 F.3d 1086, 1090 (9th Cir. 2002), Rule 706 is
5 not a means to avoid the *in forma pauperis* statute’s “prohibition against using public funds to
6 pay for the expenses of witnesses,” *Manriquez v. Huchins*, 2012 WL 5880431, at *12 (E.D. Cal.
7 2012), nor does Rule 706 “contemplate court appointment and compensation of an expert witness
8 as an advocate for one of the parties,” *Faleto go v. Moya*, 2013 WL 524037, at *2 (S.D. Cal.
9 2013).

10 “Where a party has filed a motion for appointment of a neutral expert under Rule 706, the
11 court must provide a reasoned explanation of its ruling on the motion. Several factors guide the
12 court’s decision. First, and most importantly, the court must consider whether the opinion of a
13 neutral expert will promote accurate fact finding. The court may also consider the ability of the
14 indigent party to obtain an expert and the significance of the rights at stake in the case. Expert
15 witnesses should not be appointed where they are not necessary or significantly useful for the trier
16 of fact to comprehend a material issue in a case.” *Johnson v. Cate*, 2015 WL 5321784, at *2 (E.D.
Cal. 2015) (citations omitted).

17 Plaintiff’s request for appointment of an expert witness will be denied. First, Plaintiff has
18 failed to show that an expert is “necessary or significantly useful for the trier of fact to
19 comprehend a material issue in [this] case.” *Johnson*, 2015 WL 5321784, at *2. Plaintiff has not
20 explained how a neutral expert would assist the Court or the jury in comprehending a material
21 issue in this case. Plaintiff can provide testimony regarding his observations of and experience
22 with the unsanitary conditions at Wasco State Prison. There is no indication that the trier of fact
23 will not be able to understand or interpret the evidence on these issues without the assistance of
24 an independent expert.

25 Although Plaintiff also requests an expert “to qualify the Plaintiff as entitled to the
26 Reasonable Accommodations to which he requested and was subsequently denied[,]” this case
27 proceeds only on Plaintiff’s claims against Defendants Lopez, Wade, White, and Doe for
28 unconstitutional conditions of confinement in violation of Plaintiff’s Eighth Amendment rights.

1 (See ECF Nos. 18, 19, 32.) All other claims, including Plaintiff's claims pursuant to the
2 Americans with Disabilities Act, have been dismissed. (See ECF Nos. 18, 19.) Therefore, whether
3 Plaintiff was entitled to a reasonable accommodation is not an issue in this case.

4 Second, Plaintiff appears to be requesting that the Court appoint an expert for him—not a
5 neutral expert. (See ECF No. 32.) Appointing an expert witness to assist Plaintiff in the
6 preparation of his case would be an improper use of Rule 706(a). *Faleto go*, 2013 WL 524037, at
7 *2 (S.D. Cal. 2013) (Rule 706(a) “does not contemplate court appointment and compensation of
8 an expert witness as an advocate for one of the parties.”).

9 Accordingly, IT IS HEREBY ORDERED that Plaintiff's request for appointment of an
10 expert witness (ECF No. 32) is denied.
11

12 IT IS SO ORDERED.
13

Dated: June 28, 2021

/s/ *Eric P. Groj*
UNITED STATES MAGISTRATE JUDGE